

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

Paul W. Verner
VERNER SIMON, P.C.
744 Broad Street, 16th Floor
Newark, NJ 07102
Attorneys for VALERIA RUBINO

JOHNNY RIVAS and RUPERTO CASTELLANOS,
Individually, and on Behalf of All Other Persons
Similarly Situated,

Plaintiffs,

Case: 09-CV-9564(MGC)(FM)

-against-

ANSWER

ROSSO ENTERPRISES CORP. d/b/a Aqua
Restaurant, ALBERTO BAUDO, VALERIO
RUBINO, and JOHN DOES #1-10, Jointly and
Severally,

Defendants.

Defendant, Valeria Rubino, by her attorneys, Verner Simon, PC, as and for her answer to the plaintiffs' Complaint and Jury Demand, respectfully responds and alleges as follows:

1. The Defendant answering herein denies information and belief sufficient to form a belief as to the truth or falsity of the allegations in paragraph number 1.
2. The Defendant answering herein denies the allegations contained in paragraph numbered 2.
3. The Defendant answering herein denies the allegations contained in paragraph numbered 3.
4. Paragraph 4 contains only conclusions of law; the Defendant respectfully refers all questions of law to this Honorable Court for a determination.
5. Paragraph 5 contains only conclusions of law; the Defendant respectfully refers all questions of law to this Honorable Court for a determination.
6. Paragraph 6 contains only conclusions of law; the Defendants respectfully refers all

questions of law to this Honorable Court for a determination.

7. Defendant answering herein admits, upon information and belief only, the allegations contained in paragraph 7.

8. Defendant answering herein admits, upon information and belief only, the allegations contained in paragraph 8.

9. The Defendants answering herein deny the allegations contained in paragraph numbered 9, and avers that defendant Rosso Enterprises Corp. is a corporation organized and existing under the laws of the State of New, with it's place of business at 21 Peck Slip, New York, New York, 10038, and operates a restaurant named "Aqua Restaurant".

10. The Defendant answering herein admits the allegations contained in paragraph numbered 10, except avers that defendant Alberto Baudo is the President and day to day operator of the restaurant, and a shareholder of Rosso Enterprises Corp., and that the defendant Valeria Rubino is a shareholder of Rosso Enterprises Corp. without any day to day responsibility for the affairs of the restaurant All statements and conclusions of law are respectfully referred to this Honorable Court for a determination.

11. The Defendant answering herein denies the allegations contained in paragraph numbered 11.

12. The Defendant answering herein denies the allegations contained in paragraph numbered 12, and aver that the plaintiffs have alleged a class that pre-dates Rosso Enterprises Corp.'s existence, and Aqua Restaurant's existence. All statements and conclusions of law are respectfully referred to this Honorable Court for a determination.

13. The Defendant answering herein denies the allegations contained in paragraph numbered 13.

14. The Defendant answering herein denies the allegations contained in paragraph numbered 14.

15. The Defendant answering herein denies the allegations contained in paragraph numbered 15.

16. The Defendant answering herein denies the allegations contained in paragraph numbered 16.
17. The Defendant answering herein denies the allegations contained in paragraph numbered 17.
18. The Defendant answering herein denies the allegations contained in paragraph numbered 18.

CLASS ALLEGATIONS

19. The Defendant answering herein repeats and realleges each and every one of the preceding paragraphs of this Answer as if fully reproduced here.
20. The Defendant answering herein denies the allegations contained in paragraph numbered 20.
21. The Defendant answering herein denies the allegations contained in paragraph numbered 21.
22. The Defendant answering herein denies the allegations contained in paragraph numbered 22.
23. The Defendant answering herein denies the allegations contained in paragraph numbered 23.
24. The Defendant answering herein denies the allegations contained in paragraph numbered 24.
25. The Defendant answering herein denies the allegations contained in paragraph numbered 25.
26. The Defendant answering herein denies the allegations contained in paragraph numbered 26.

STATEMENT OF FACTS

27. The Defendant answering herein repeats and realleges each and every one of the preceding paragraphs of this Answer as if fully reproduced here.
28. The Defendant answering herein denies information or belief sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph numbered 28.
29. The Defendant answering herein denies information or belief sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph numbered 29.
30. The Defendant answering herein denies information or belief sufficient to form a belief as to

the truth or falsity of the allegations contained in paragraph numbered 30.

31. The Defendant answering herein denies information or belief sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph numbered 31.

32. The Defendant answering herein denies information or belief sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph numbered 32.

33. The Defendant answering herein denies information or belief sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph numbered 33.

34. The Defendant answering herein denies information or belief sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph numbered 34

35. The Defendant answering herein denies information or belief sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph numbered 35.

36. The Defendant answering herein denies information or belief sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph numbered 36.

37. The Defendant answering herein denies information or belief sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph numbered 37.

38. The Defendant answering herein denies information or belief sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph numbered 38.

39. The Defendant answering herein denies information or belief sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph numbered 39.

40. The Defendant answering herein denies information or belief sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph numbered 40.

41. The Defendant answering herein denies information or belief sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph numbered 41.

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45. The Defendant answering herein denies information or belief sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph numbered 45.

46. The Defendant answering herein denies information or belief sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph numbered 46.

47. The Defendant answering herein denies information or belief sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph numbered 47.

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the truth or falsity of the allegations contained in paragraph numbered 53.

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56. The Defendant answering herein denies information or belief sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph numbered 56.

57. The Defendant answering herein denies information or belief sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph numbered 57.

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59. The Defendant answering herein denies information or belief sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph numbered 59.

60. The Defendant answering herein denies information or belief sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph numbered 60.

61. The Defendant answering herein denies information or belief sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph numbered 61.

62. The Defendant answering herein denies information or belief sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph numbered 62.

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70. The Defendant answering herein denies information or belief sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph numbered 70.

71. The Defendant answering herein denies information or belief sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph numbered 71.

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75. The Defendant answering herein denies information or belief sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph numbered 75.

76. The Defendant answering herein denies information or belief sufficient to form a belief as to

the truth or falsity of the allegations contained in paragraph numbered 76.

77. The Defendant answering herein denies information or belief sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph numbered 77.

78. The Defendant answering herein denies information or belief sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph numbered 78.

79. The Defendant answering herein denies information or belief sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph numbered 79.

80. The Defendant answering herein denies information or belief sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph numbered 80.

FIRST CLAIM FOR RELIEF

81. The Defendant answering herein repeats and realleges each and every one of the preceding paragraphs of this Answer as if fully reproduced here.

82. The plaintiffs have alleged only conclusions of law in paragraph numbered 82.

83. The plaintiffs have alleged only conclusions of law in paragraph numbered 83.

84. The plaintiffs have alleged only conclusions of law in paragraph numbered 84.

85. The plaintiffs have alleged only conclusions of law in paragraph numbered 85.

86. The Defendant answering herein denies information or belief sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph numbered 86.

87. The plaintiffs have alleged only conclusions of law in paragraph numbered 87.

88. The plaintiffs have alleged only conclusions of law in paragraph numbered 88.

89. The plaintiffs have alleged only conclusions of law in paragraph numbered 89.

90. The Defendant answering herein denies the allegations contained in paragraph numbered 90.

SECOND CLAIM FOR RELIEF

91. The Defendant answering herein repeats and realleges each and every one of the preceding paragraphs of this Answer as if fully reproduced here.
92. The plaintiffs have alleged only conclusions of law in paragraph numbered 92.
93. The plaintiffs have alleged only conclusions of law in paragraph numbered 93.
94. The plaintiffs have alleged only conclusions of law in paragraph numbered 94.
95. The Defendant answering herein denies the allegations contained in paragraph numbered 95.
96. The plaintiffs have alleged only a waiver not requiring any admissions by the answering defendant.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE:

The defendant hereby asserts and reserve any defenses which the further investigation of this matter may prove applicable herein.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE:

The complaint fails to state a cause of action or a claim.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE:

The action is barred in whole or in part by the doctrine of waiver.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE:

The claims and proposed class in this action fail the requirements of FRCP 23 in order

to qualify for a class action, and the class allegations of the complaint must be stricken and dismissed.

FIRST CROSS - CLAIM

1. The Defendant answering herein repeats and realleges each and every one of the preceding paragraphs of this Answer as if fully reproduced here.
2. If the plaintiffs sustained injury or damage as alleged in the complaint and if said injury or damage was caused by any negligence other than that of plaintiffs, then such injuries were caused by the negligence of the co-defendants, BAUDO and ROSSO CORP. named above.
3. That by reason of the foregoing, defendant RUBINO is entitled to have judgment over and against said co-defendants in whole or in part as to any sum awarded to plaintiffs against RUBINO.

SECOND CROSS - CLAIM

4. The Defendant answering herein repeats and realleges each and every one of the preceding paragraphs of this Answer as if fully reproduced here.
5. Defendants, ROSSO CORP. and BAUDO have agreed by contract, express or implied, to indemnify and hold harmless defendant RUBINO for any and all injury or damage resulting from the occurrences such as that which forms the basis of the complaint.
6. That by reason of the foregoing, RUBINO is entitled to have judgment over and against said co-defendants in whole or in part as to any sum awarded to plaintiff against RUBINO.

WHEREFORE, defendant RUBINO demands judgment dismissing plaintiffs' complaint in its

entirety or judgment in favor of RUBINO against ROSSO CORP. and BAUDO in whole or in part as to any judgment recovered by plaintiffs in this matter, together with interest, costs and disbursements.

Dated: New York, New York
October 4, 2010

Yours, etc.,

S/ PAUL W. VERNER
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